

California Regional Water Quality Control Board
North Coast Region

Summary of significant new waiver conditions for THPs and NTMPs

ORDER NO. R1-2009-0038

Categorical Waiver of Waste Discharge Requirements
For
Discharges Related to Timber Harvest Activities
On Non-Federal Lands in the
North Coast Region

The following is a brief summary of the most significant changes to the Categorical Waiver of Waste Discharge Requirements for timber harvesting on non-federal lands ("Order," Order No. R1-2009-0038). The intent of this guidance is to provide a brief summary of the Order conditions and schedule; it is not an exhaustive detailing of the conditions. In addition to the significant changes described below, landowners should read the Order carefully and become familiar with the general waiver conditions (Section I), the eligibility criteria and specific conditions for the category in which their project will be enrolled, as well as the application procedures and submission requirements (Section II), the grandfathering of existing projects (Section III), and termination of coverage (Section IV).

Landowners are encouraged to contact Regional Board staff at any time if clarification is needed regarding any of the waiver conditions. Jim Burke (707-576-2289 or jburke@waterboards.ca.gov) is the lead staff for implementation of the waiver.

Category E – NTMPs

New NTMPs:

- must be enrolled in the waiver prior to commencing operations on the first NTO,
- must include an Erosion Control Plan (ECP) for the entire NTMP area with the application.

Previously waived NTMPs:

- may continue to operate under the 2004 waiver until June 4, 2010,
- must be enrolled in the new waiver prior to commencing operations on the first NTO submitted after June 4, 2010,
- must meet the eligibility criteria and conditions to enroll in the new waiver,
- must submit an ECP for each NTO submitted after June 4, 2010,
- must submit an ECP for the entire NTMP area prior to commencing operations on the first NTO submitted after June 4, 2014.

All NTMPs:

- must include a Road Plan (Section I(E)(6) on pages 14 through 16 of the Order) within five years of enrolling in the waiver,
- upon enrolling in the waiver, whether as a previously waived NTMP or as a new NTMP, must meet the canopy retention requirements for Class I and II watercourses as summarized below (and described fully in Section I(E)(4)(a) and (b) on pages 14 and 15 of the Order).

Category F – THPs

- THPs must include an ECP for the entire logging area to be eligible for coverage under the waiver.
- THPs that include clearcutting may now be waived provided they include the following riparian zone protection:
 1. Class I – 300 feet wide, no harvest from 0 to 30 feet, retain 85% overstory canopy from 30 to 150 feet, and retain 65% overstory canopy from 150 to 300 feet.
 2. Class II - 200 feet wide, no harvest from 0 to 30 feet, retain 85% overstory canopy from 30 to 100 feet, and retain 65% overstory canopy from 10 to 200 feet.
 3. Class III - 100 feet wide, no harvest from 0 to 10 feet, retain 85% overstory canopy from 10 to 50 feet, and retain 65% overstory canopy from 50 to 100 feet.

Note - Previously waived THPs are not required to enroll in the new waiver.

Riparian canopy retention for NTMPs and THPs

- Landowners may propose site specific measures to maintain and restore natural shade on Class I and II watercourses. Such measures may be approved when the landowner demonstrates to the satisfaction of Regional Board staff that such measures are adequate,
- In the absence of site specific measures proposed by the landowner, post harvest canopy within the WLPZ must retain a minimum of 85% overstory canopy within 75 feet of Class I streams (50 feet on Class II streams) and 65% within the remainder of the WLPZ,
- When the above canopy levels are not present prior to harvesting, no trees, both inside the WLPZ and beyond, that provide shade to watercourses during the summer months may be harvested.

Inspection and Reporting Plan

Landowners with NTMPs and THPs must now conduct two winter period inspections of the plan area and submit an annual summary report to the Regional Board. Inspections are to continue through the life a NTO or THP and may conclude when CAL FIRE signs the completion report. It should be noted that the inspections are not solely for the purpose of observing sites included in the ECP, but to ensure that measures to prevent and minimize sediment discharge are functioning as intended on all roads in the logging area, and identify and correct new or existing problems that could result in adverse impacts to water quality in a timely manner.

Fees

NTMPs, including previously waived NTMPs applying for coverage under R1-2009-0038, and THPs seeking to enroll in Categorical Waivers E and F, respectively, must include a one time fee of \$250 with their application.

Implementation Schedules

Technical reports required as conditions of waiver eligibility, such as ECPs and Road Plans, include implementation schedules. The implementation schedule is proposed by the landowner and subject to approval by Regional Board staff. It should be based on priority, which in turn should be based on the potential impacts to the beneficial uses of water.

There has been misinterpretation by some that the ECP sites and road upgrades MUST be completed by the date on which the plans are due. THIS IS INCORRECT. The plans must propose a schedule for sediment site remediations and road upgrades that is reasonable. For instance, a landowner may inventory roads and determine that some culverts are not sized to the 100-year storm event, but that those culverts are functioning and show no evidence of past failure nor any likelihood of failure in the near future. Those situations may be acceptable, and the culverts placed on a “watch list” in the road plan.

The goal is to implement corrective action at a site before it fails and impacts water quality, while allowing landowners a good deal of flexibility. It is the intention of Regional Board staff that the majority of work to prevent and minimize sediment discharge can be conducted in conjunction with timber harvesting operations.

We encourage landowners to consult with us early so that we can work together to develop strategies that can satisfy the landowners management objectives and still meet water quality protection goals. Please do not assume, call and ask the questions of us. Staff are available and willing to make field visits to evaluate waiver conditions and provide guidance on meeting those conditions.

Table 1. Comparison between significant conditions of the 2004 waiver with the 2009 waiver

	2004 Waiver	2009 Waiver
NTMPs:		
ECPs	For each NTO	New NTMPs: For entire NTMP upon enrolling in the waiver Existing NTMPs: For each NTO until June 4, 2014, for entire NTMP after June 4, 2014
Class I canopy retention	Standard FPRs	FPRs T&I for entire NTMP
Class II canopy retention	Standard FPRs	85% first 50 feet, 65% in the remainder of WLPZ, or landowners may propose equal or better protection
Road Plan	Not required	Must submit road plan for NTMP roads within five years of enrolling in waiver
Previously waived NTMPs	Grandfathered in, not required to meet new conditions	Must enroll in new waiver by first NTO after June 4, 2010, and meet 2009 conditions detailed above
THPs:		
ECP	Not required	For entire THP area
Class I canopy retention	FPR T&I	FPR T&I
Class II canopy retention	70% overstory throughout the WLPZ	85% first 50 feet, 65% in the remainder of WLPZ, or landowners may propose equal or better protection
NTMPs and THPs:		
Inspection and reporting	Not required	Two winter period inspections and annual summary report
Enrollment	Submit certification form, commence operations after 14 days	Submit certification form, may commence operations upon receipt of written notification from EO
Fee	none	\$250 application fee